

1 AN ACT in relation to mental health.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Mental Health and Developmental
5 Disabilities Administrative Act is amended by changing
6 Section 5.1 and adding Section 15f as follows:

7 (20 ILCS 1705/5.1) (from Ch. 91 1/2, par. 100-5.1)

8 Sec. 5.1. The Department shall develop, by rule, the
9 procedures and standards by which it shall approve
10 medications for clinical use in its facilities. A list of
11 those drugs approved pursuant to these procedures shall be
12 distributed to all Department facilities.

13 Drugs not listed by the Department may not be
14 administered in facilities under the jurisdiction of the
15 Department, provided that an unlisted drug may be
16 administered as part of research with the prior written
17 consent of the Secretary specifying the nature of the
18 permitted use and the physicians authorized to prescribe the
19 drug. Drugs, as used in this Section, mean psychotropic and
20 narcotic drugs.

21 Notwithstanding any other provision of this Section, a
22 recipient of mental health services in a facility under the
23 Department's jurisdiction who was admitted to the facility
24 involuntarily by court order under the Mental Health and
25 Developmental Disabilities Code may participate in biomedical
26 or pharmacological research at the facility only after
27 consenting to such participation and only after the court
28 that ordered the recipient committed to the facility approves
29 the recipient's consent.

30 No physician in the Department shall sign a prescription
31 in blank, nor permit blank prescription forms to circulate

1 out of his possession or control.

2 (Source: P.A. 89-507, eff. 7-1-97.)

3 (20 ILCS 1705/15f new)

4 Sec. 15f. Educational information to recipient upon
5 discharge.

6 (a) In this Section:

7 "Care provider" means the person or persons who can
8 demonstrate that they are primarily responsible for the
9 health care of the recipient. The term does not apply to any
10 person providing care through a hospital, nursing home, group
11 home, or any other such facility.

12 "Recipient" means a person who has received or is
13 receiving treatment (as defined in the Mental Health and
14 Developmental Disabilities Code) at a facility under the
15 Department's jurisdiction.

16 (b) Upon a recipient's discharge from a facility under
17 the Department's jurisdiction, the Department shall provide
18 to the recipient and his or her care provider a packet of
19 written educational information developed and supplied by the
20 Department describing symptoms of common mental illnesses,
21 early warning signs of decompensation, and availability of
22 other education, community, and statewide services. The
23 packet shall also include the telephone number of the
24 Department's information line and information specific to the
25 laws and procedures addressing admission to a mental health
26 facility and guardianship.

27 (c) Upon a recipient's discharge from a facility under
28 the Department's jurisdiction, the Department may disclose
29 confidential treatment information to the recipient's primary
30 care provider, when such information is medically necessary
31 for the provision of appropriate health care or treatment by
32 the care provider or is related to the safety of the
33 recipient or care provider.

1 Before disclosing the information specified under this
2 subsection, the Department must: (i) provide written notice
3 to the recipient; (ii) request in writing the recipient's
4 consent to the disclosure; (iii) work with the recipient and
5 care provider to encourage and secure appropriate recipient
6 authorization; (iv) function as a mediator, negotiating the
7 boundaries of confidentiality to meet the needs of the
8 recipient and the care provider; and (v) work with the
9 recipient to stress the importance of keeping the care
10 provider informed and involved with the recipient's treatment
11 process. If the recipient refuses to consent and the
12 recipient's treating physician at the mental health facility
13 determines that the information is medically necessary for
14 the appropriate provision of health care or treatment by the
15 care provider or is related to the safety of the recipient or
16 the care provider, the Department may still release
17 information to the appropriate care provider.

18 The reason for the intended disclosure, the specific
19 information to be released, and the persons to whom the
20 disclosure is to be made, even if consent has not been
21 obtained, must be provided to the recipient and to the care
22 provider. All these procedures must be documented by the
23 treating physician in the recipient's record, including a
24 specific notation as to whether the recipient's consent was
25 given.

26 Section 10. The Mental Health and Developmental
27 Disabilities Code is amended by adding Sections 2-102.5 and
28 2-107.3 and changing Section 2-200 as follows:

29 (405 ILCS 5/2-102.5 new)

30 Sec. 2-102.5. Participation in research. A recipient who
31 was admitted to a mental facility involuntarily by court
32 order under this Code may participate in biomedical or

1 pharmacological research at the facility only after
2 consenting to such participation and only after the court
3 that ordered the recipient committed to the facility approves
4 the recipient's consent.

5 (405 ILCS 5/2-107.3 new)

6 Sec. 2-107.3. Administration of non-psychotropic
7 medication.

8 (a) If an adult recipient of services, or his or her
9 guardian or substitute decision maker, refuses medication
10 (other than psychotropic medication) prescribed to treat the
11 recipient's mental illness, that medication may be
12 administered to the recipient without the recipient's
13 informed consent (i) as provided in subsection (a) of Section
14 2-107 or (ii) under the following standards:

15 (1) Any person 18 years of age or older, including
16 any guardian, may petition the circuit court for an order
17 authorizing the administration of medication other than
18 psychotropic medication to a recipient of services. The
19 petition shall state that the petitioner has made a good
20 faith attempt to determine whether the recipient has
21 executed a power of attorney for health care under the
22 Powers of Attorney for Health Care Law or a declaration
23 for mental health treatment under the Mental Health
24 Treatment Preference Declaration Act and to obtain copies
25 of these instruments if they exist. If either of the
26 above-named instruments is available to the petitioner,
27 the instrument or a copy of the instrument shall be
28 attached to the petition as an exhibit. The petitioner
29 shall deliver a copy of the petition, and notice of the
30 time and place of the hearing, to the respondent, his or
31 her attorney, any known agent or attorney-in-fact, if
32 any, and the guardian, if any, no later than 3 days prior
33 to the date of the hearing. Service of the petition and

1 notice of the time and place of the hearing may be made
2 by transmitting them via facsimile machine to the
3 respondent or other party. Upon receipt of the petition
4 and notice, the party served, or the person delivering
5 the petition and notice to the party served, shall
6 acknowledge service. If the party sending the petition
7 and notice does not receive acknowledgement of service
8 within 24 hours, service must be made by personal
9 service.

10 The petition may include a request that the court
11 authorize such testing and procedures as may be essential
12 for the safe and effective administration of the
13 medication sought to be administered, but only if the
14 petition sets forth the specific testing and procedures
15 sought to be administered.

16 If a hearing is requested to be held immediately
17 following the hearing on a petition for involuntary
18 admission, then the notice requirement shall be the same
19 as that for the hearing on the petition for involuntary
20 admission, and the petition filed pursuant to this
21 Section shall be filed with the petition for involuntary
22 admission.

23 (2) The court shall hold a hearing within 7 days
24 after the filing of the petition. The People, the
25 petitioner, or the respondent shall be entitled to a
26 continuance of up to 7 days as of right. An additional
27 continuance of not more than 7 days may be granted to
28 any party (i) upon a showing that the continuance is
29 needed in order to adequately prepare for or present
30 evidence in a hearing under this Section or (ii) under
31 exceptional circumstances. The court may grant an
32 additional continuance not to exceed 21 days when, in its
33 discretion, the court determines that such a continuance
34 is necessary in order to provide the recipient with an

1 examination pursuant to Section 3-803 or 3-804 of this
2 Act, to provide the recipient with a trial by jury as
3 provided in Section 3-802 of this Act, or to arrange for
4 the substitution of counsel as provided for by the
5 Illinois Supreme Court Rules. The hearing shall be
6 separate from a judicial proceeding held to determine
7 whether a person is subject to involuntary admission but
8 may be heard immediately preceding or following such a
9 judicial proceeding and may be heard by the same trier of
10 fact or law as in that judicial proceeding.

11 (3) Unless otherwise provided in this Section, the
12 procedures set forth in Article VIII of Chapter 3 of this
13 Act, including the provisions regarding appointment of
14 counsel, shall govern hearings held under this Section.

15 (4) Medication other than psychotropic medication
16 shall not be administered to the recipient unless it has
17 been determined by clear and convincing evidence that all
18 of the following factors are present:

19 (A) The recipient has a serious mental
20 illness.

21 (B) Because of that mental illness, the
22 recipient exhibits any one of the following: (i)
23 deterioration of his or her ability to function,
24 (ii) suffering, or (iii) threatening behavior.

25 (C) The illness has existed for a period
26 marked by the continuing presence of the symptoms
27 set forth in item (B) of this subdivision (4) or the
28 repeated episodic occurrence of these symptoms.

29 (D) The benefits of the treatment outweigh the
30 harm.

31 (E) The recipient lacks the capacity to make a
32 reasoned decision about the treatment.

33 (F) Other less restrictive services have been
34 explored and found inappropriate.

1 (G) If the petition seeks authorization for
2 testing and other procedures, the testing and
3 procedures are essential for the safe and effective
4 administration of the treatment.

5 (5) In no event shall an order issued under this
6 Section be effective for more than 90 days. A second
7 90-day period of involuntary treatment may be authorized
8 pursuant to a hearing that complies with the standards
9 and procedures of this Section. Thereafter, additional
10 180-day periods of involuntary treatment may be
11 authorized pursuant to the standards and procedures of
12 this Section without limit. If a new petition to
13 authorize the administration of medication other than
14 psychotropic medication is filed at least 15 days prior
15 to the expiration of the prior order, and if any
16 continuance of the hearing is agreed to by the recipient,
17 the administration of the medication may continue in
18 accordance with the prior order pending the completion of
19 a hearing under this Section.

20 (6) An order issued under this Section shall
21 designate the persons authorized to administer the
22 medication under the standards and procedures of this
23 Section. Those persons shall have complete discretion not
24 to administer any medication authorized under this
25 Section. The order shall also specify the medications and
26 the anticipated range of dosages that have been
27 authorized.

28 (b) A guardian may be authorized to consent to the
29 administration of medication other than psychotropic
30 medication to an objecting recipient only under the standards
31 and procedures of subsection (a).

32 (c) Notwithstanding any other provision of this Section,
33 a guardian may consent to the administration of medication
34 other than psychotropic medication to a non-objecting

1 recipient under Article XIa of the Probate Act of 1975.

2 (d) Nothing in this Section shall prevent the
3 administration of medication other than psychotropic
4 medication to recipients in an emergency under Section 2-107
5 of this Act.

6 (e) Notwithstanding any of the provisions of this
7 Section, medication other than psychotropic medication may be
8 administered pursuant to a power of attorney for health care
9 under the Powers of Attorney for Health Care Law or a
10 declaration Declaration Act.

11 (405 ILCS 5/2-200) (from Ch. 91 1/2, par. 2-200)

12 Sec. 2-200. (a) Upon commencement of services, or as
13 soon thereafter as the condition of the recipient permits,
14 every adult recipient, as well as the recipient's guardian or
15 substitute decision maker, and every recipient who is 12
16 years of age or older and the parent or guardian of a minor
17 or person under guardianship shall be informed orally and in
18 writing of the rights guaranteed by this Chapter which are
19 relevant to the nature of the recipient's services program.
20 Every facility shall also post conspicuously in public areas
21 a summary of the rights which are relevant to the services
22 delivered by that facility.

23 (b) A recipient who is 12 years of age or older and the
24 parent or guardian of a minor or person under guardianship at
25 any time may designate, and upon commencement of services
26 shall be informed of the right to designate, a person or
27 agency to receive notice under Section 2-201 or to direct
28 that no information about the recipient be disclosed to any
29 person or agency.

30 (c) Upon commencement of services, or as soon thereafter
31 as the condition of the recipient permits, the facility shall
32 ask the adult recipient or minor recipient admitted pursuant
33 to Section 3-502 whether the recipient wants the facility to

1 contact the recipient's spouse, parents, guardian, close
2 relatives, friends, attorney, advocate from the Guardianship
3 and Advocacy Commission or the agency designated by the
4 Governor under Section 1 of "An Act in relation to the
5 protection and advocacy of the rights of persons with
6 developmental disabilities, and amending Acts therein named",
7 approved September 20, 1985, or others and inform them of the
8 recipient's presence at the facility. The facility shall by
9 phone or by mail contact at least two of those people
10 designated by the recipient and shall inform them of the
11 recipient's location. If the recipient so requests, the
12 facility shall also inform them of how to contact the
13 recipient.

14 (d) Upon commencement of services, or as soon thereafter
15 as the condition of the recipient permits, the facility shall
16 advise the recipient as to the circumstances under which the
17 law permits (i) the use of emergency forced medication under
18 subsection (a) of Section 2-107, restraint under Section
19 2-108, or seclusion under Section 2-109 and (ii) the
20 administration of medication other than psychotropic
21 medication as authorized by court order under Section
22 2-107.3. At the same time, the facility shall inquire of the
23 recipient which form of intervention the recipient would
24 prefer if any of these circumstances should arise. The
25 recipient's preference shall be noted in the recipient's
26 record and communicated by the facility to the recipient's
27 guardian or substitute decision maker, if any, and any other
28 individual designated by the recipient. If any such
29 circumstances subsequently do arise, the facility shall give
30 due consideration to the preferences of the recipient
31 regarding which form of intervention to use as communicated
32 to the facility by the recipient or as stated in the
33 recipient's advance directive.

34 (Source: P.A. 91-726, eff. 6-2-00.)

1 Section 15. The Rights of Crime Victims and Witnesses
2 Act is amended by changing Section 4.5 as follows:

3 (725 ILCS 120/4.5)

4 Sec. 4.5. Procedures to implement the rights of crime
5 victims. To afford crime victims their rights, law
6 enforcement, prosecutors, judges and corrections will provide
7 information, as appropriate of the following procedures:

8 (a) At the request of the crime victim, law enforcement
9 authorities investigating the case shall provide notice of
10 the status of the investigation, except where the State's
11 Attorney determines that disclosure of such information would
12 unreasonably interfere with the investigation, until such
13 time as the alleged assailant is apprehended or the
14 investigation is closed.

15 (b) The office of the State's Attorney:

16 (1) shall provide notice of the filing of
17 information, the return of an indictment by which a
18 prosecution for any violent crime is commenced, or the
19 filing of a petition to adjudicate a minor as a
20 delinquent for a violent crime;

21 (2) shall provide notice of the date, time, and
22 place of trial;

23 (3) or victim advocate personnel shall provide
24 information of social services and financial assistance
25 available for victims of crime, including information of
26 how to apply for these services and assistance;

27 (4) shall assist in having any stolen or other
28 personal property held by law enforcement authorities for
29 evidentiary or other purposes returned as expeditiously
30 as possible, pursuant to the procedures set out in
31 Section 115-9 of the Code of Criminal Procedure of 1963;

32 (5) or victim advocate personnel shall provide
33 appropriate employer intercession services to ensure that

1 employers of victims will cooperate with the criminal
2 justice system in order to minimize an employee's loss of
3 pay and other benefits resulting from court appearances;

4 (6) shall provide information whenever possible, of
5 a secure waiting area during court proceedings that does
6 not require victims to be in close proximity to defendant
7 or juveniles accused of a violent crime, and their
8 families and friends;

9 (7) shall provide notice to the crime victim of the
10 right to have a translator present at all court
11 proceedings;

12 (8) in the case of the death of a person, which
13 death occurred in the same transaction or occurrence in
14 which acts occurred for which a defendant is charged with
15 an offense, shall notify the spouse, parent, child or
16 sibling of the decedent of the date of the trial of the
17 person or persons allegedly responsible for the death;

18 (9) shall inform the victim of the right to have
19 present at all court proceedings, subject to the rules of
20 evidence, an advocate or other support person of the
21 victim's choice, and the right to retain an attorney, at
22 the victim's own expense, who, upon written notice filed
23 with the clerk of the court and State's Attorney, is to
24 receive copies of all notices, motions and court orders
25 filed thereafter in the case, in the same manner as if
26 the victim were a named party in the case; and

27 (10) at the sentencing hearing shall make a good
28 faith attempt to explain the minimum amount of time
29 during which the defendant may actually be physically
30 imprisoned. The Office of the State's Attorney shall
31 further notify the crime victim of the right to request
32 from the Prisoner Review Board information concerning the
33 release of the defendant under subparagraph (d)(1) of
34 this Section; and

1 (11) shall request restitution at sentencing and
2 shall consider restitution in any plea negotiation, as
3 provided by law.

4 (c) At the written request of the crime victim, the
5 office of the State's Attorney shall:

6 (1) provide notice a reasonable time in advance of
7 the following court proceedings: preliminary hearing, any
8 hearing the effect of which may be the release of
9 defendant from custody, or to alter the conditions of
10 bond and the sentencing hearing. The crime victim shall
11 also be notified of the cancellation of the court
12 proceeding in sufficient time, wherever possible, to
13 prevent an unnecessary appearance in court;

14 (2) provide notice within a reasonable time after
15 receipt of notice from the custodian, of the release of
16 the defendant on bail or personal recognizance or the
17 release from detention of a minor who has been detained
18 for a violent crime;

19 (3) explain in nontechnical language the details of
20 any plea or verdict of a defendant, or any adjudication
21 of a juvenile as a delinquent for a violent crime;

22 (4) where practical, consult with the crime victim
23 before the Office of the State's Attorney makes an offer
24 of a plea bargain to the defendant or enters into
25 negotiations with the defendant concerning a possible
26 plea agreement, and shall consider the written victim
27 impact statement, if prepared prior to entering into a
28 plea agreement;

29 (5) provide notice of the ultimate disposition of
30 the cases arising from an indictment or an information,
31 or a petition to have a juvenile adjudicated as a
32 delinquent for a violent crime;

33 (6) provide notice of any appeal taken by the
34 defendant and information on how to contact the

1 appropriate agency handling the appeal;

2 (7) provide notice of any request for
3 post-conviction review filed by the defendant under
4 Article 122 of the Code of Criminal Procedure of 1963,
5 and of the date, time and place of any hearing concerning
6 the petition. Whenever possible, notice of the hearing
7 shall be given in advance;

8 (8) forward a copy of any statement presented under
9 Section 6 to the Prisoner Review Board to be considered
10 by the Board in making its determination under subsection
11 (b) of Section 3-3-8 of the Unified Code of Corrections.

12 (d) (1) The Prisoner Review Board shall inform a victim
13 or any other concerned citizen, upon written request, of
14 the prisoner's release on parole, mandatory supervised
15 release, electronic detention, work release or by the
16 custodian of the discharge of any individual who was
17 adjudicated a delinquent for a violent crime from State
18 custody and by the sheriff of the appropriate county of
19 any such person's final discharge from county custody.
20 The Prisoner Review Board, upon written request, shall
21 provide to a victim or any other concerned citizen a
22 recent photograph of any person convicted of a felony,
23 upon his or her release from custody. The Prisoner Review
24 Board, upon written request, shall inform a victim or any
25 other concerned citizen when feasible at least 7 days
26 prior to the prisoner's release on furlough of the times
27 and dates of such furlough. Upon written request by the
28 victim or any other concerned citizen, the State's
29 Attorney shall notify the person once of the times and
30 dates of release of a prisoner sentenced to periodic
31 imprisonment. Notification shall be based on the most
32 recent information as to victim's or other concerned
33 citizen's residence or other location available to the
34 notifying authority. For purposes of this paragraph (1)

1 of subsection (d), "concerned citizen" includes relatives
2 of the victim, friends of the victim, witnesses to the
3 crime, or any other person associated with the victim or
4 prisoner.

5 (2) When the defendant has been committed to the
6 Department of Human Services pursuant to Section 5-2-4 or
7 any other provision of the Unified Code of Corrections,
8 ~~the--victim--may--request--to--be--notified--by~~ the releasing
9 authority shall notify the victim of the defendant's
10 discharge from State custody. Notification by certified
11 mail to the most current address provided by the victim
12 shall constitute compliance with this paragraph (2).

13 (3) In the event of an escape from State custody,
14 the Department of Corrections immediately shall notify
15 the Prisoner Review Board of the escape and the Prisoner
16 Review Board shall notify the victim. The notification
17 shall be based upon the most recent information as to the
18 victim's residence or other location available to the
19 Board. When no such information is available, the Board
20 shall make all reasonable efforts to obtain the
21 information and make the notification. When the escapee
22 is apprehended, the Department of Corrections immediately
23 shall notify the Prisoner Review Board and the Board
24 shall notify the victim.

25 (4) The victim of the crime for which the prisoner
26 has been sentenced shall receive reasonable written
27 notice not less than 15 days prior to the parole hearing
28 and may submit, in writing, on film, videotape or other
29 electronic means or in the form of a recording or in
30 person at the parole hearing, information for
31 consideration by the Prisoner Review Board. The victim
32 shall be notified within 7 days after the prisoner has
33 been granted parole and shall be informed of the right to
34 inspect the registry of parole decisions, established

1 under subsection (g) of Section 3-3-5 of the Unified Code
2 of Corrections. The provisions of this paragraph (4) are
3 subject to the Open Parole Hearings Act.

4 (5) If a statement is presented under Section 6,
5 the Prisoner Review Board shall inform the victim of any
6 order of discharge entered by the Board pursuant to
7 Section 3-3-8 of the Unified Code of Corrections.

8 (6) At the written request of the victim of the
9 crime for which the prisoner was sentenced, the Prisoner
10 Review Board shall notify the victim of the death of the
11 prisoner if the prisoner died while on parole or
12 mandatory supervised release.

13 (7) When a defendant who has been committed to the
14 Department of Corrections or the Department of Human
15 Services is released or discharged and subsequently
16 committed to the Department of Human Services as a
17 sexually violent person and the victim had requested to
18 be notified by the releasing authority of the defendant's
19 discharge from State custody, the releasing authority
20 shall provide to the Department of Human Services such
21 information that would allow the Department of Human
22 Services to contact the victim.

23 (e) The officials named in this Section may satisfy some
24 or all of their obligations to provide notices and other
25 information through participation in a statewide victim and
26 witness notification system established by the Attorney
27 General under Section 8.5 of this Act.

28 (Source: P.A. 90-14, eff. 7-1-97; 90-793, eff. 8-14-98;
29 91-237, eff. 1-1-00; 91-693, eff. 4-13-00.)

30 Section 20. The Unified Code of Corrections is amended
31 by changing Section 5-2-4 as follows:

32 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

1 Sec. 5-2-4. Proceedings after Acquittal by Reason of
2 Insanity.

3 (a) After a finding or verdict of not guilty by reason
4 of insanity under Sections 104-25, 115-3 or 115-4 of The Code
5 of Criminal Procedure of 1963, the defendant shall be ordered
6 to the Department of Human Services for an evaluation as to
7 whether he is subject to involuntary admission or in need of
8 mental health services. The order shall specify whether the
9 evaluation shall be conducted on an inpatient or outpatient
10 basis. If the evaluation is to be conducted on an inpatient
11 basis, the defendant shall be placed in a secure setting
12 unless the Court determines that there are compelling reasons
13 why such placement is not necessary. After the evaluation and
14 during the period of time required to determine the
15 appropriate placement, the defendant shall remain in jail.
16 Upon completion of the placement process the sheriff shall
17 be notified and shall transport the defendant to the
18 designated facility.

19 The Department shall provide the Court with a report of
20 its evaluation within 30 days of the date of this order. The
21 Court shall hold a hearing as provided under the Mental
22 Health and Developmental Disabilities Code to determine if
23 the individual is: (a) subject to involuntary admission; (b)
24 in need of mental health services on an inpatient basis; (c)
25 in need of mental health services on an outpatient basis; (d)
26 a person not in need of mental health services. The Court
27 shall enter its findings.

28 If the defendant is found to be subject to involuntary
29 admission or in need of mental health services on an
30 inpatient care basis, the Court shall order the defendant to
31 the Department of Human Services. The defendant shall be
32 placed in a secure setting unless the Court determines that
33 there are compelling reasons why such placement is not
34 necessary. Such defendants placed in a secure setting shall

1 not be permitted outside the facility's housing unit unless
2 escorted or accompanied by personnel of the Department of
3 Human Services or with the prior approval of the Court for
4 unsupervised on-grounds privileges as provided herein. Any
5 defendant placed in a secure setting pursuant to this
6 Section, transported to court hearings or other necessary
7 appointments off facility grounds by personnel of the
8 Department of Human Services, may be placed in security
9 devices or otherwise secured during the period of
10 transportation to assure secure transport of the defendant
11 and the safety of Department of Human Services personnel and
12 others. These security measures shall not constitute
13 restraint as defined in the Mental Health and Developmental
14 Disabilities Code. If the defendant is found to be in need of
15 mental health services, but not on an inpatient care basis,
16 the Court shall conditionally release the defendant, under
17 such conditions as set forth in this Section as will
18 reasonably assure the defendant's satisfactory progress in
19 treatment or rehabilitation and the safety of the defendant
20 or others. If the Court finds the person not in need of
21 mental health services, then the Court shall order the
22 defendant discharged from custody.

23 (1) Definitions: For the purposes of this Section:

24 (A) "Subject to involuntary admission" means: a
25 defendant has been found not guilty by reason of
26 insanity; and

27 (i) who is mentally ill and who because of his
28 mental illness is reasonably expected to inflict
29 serious physical harm upon himself or another in the
30 near future; or

31 (ii) who is mentally ill and who because of
32 his illness is unable to provide for his basic
33 physical needs so as to guard himself from serious
34 harm.

1 (B) "In need of mental health services on an
2 inpatient basis" means: a defendant who has been found
3 not guilty by reason of insanity who is not subject to
4 involuntary admission but who is reasonably expected to
5 inflict serious physical harm upon himself or another and
6 who would benefit from inpatient care or is in need of
7 inpatient care.

8 (C) "In need of mental health services on an
9 outpatient basis" means: a defendant who has been found
10 not guilty by reason of insanity who is not subject to
11 involuntary admission or in need of mental health
12 services on an inpatient basis, but is in need of
13 outpatient care, drug and/or alcohol rehabilitation
14 programs, community adjustment programs, individual,
15 group, or family therapy, or chemotherapy.

16 (D) "Conditional Release" means: the release from
17 either the custody of the Department of Human Services or
18 the custody of the Court of a person who has been found
19 not guilty by reason of insanity under such conditions as
20 the Court may impose which reasonably assure the
21 defendant's satisfactory progress in treatment or
22 habilitation and the safety of the defendant and others.
23 The Court shall consider such terms and conditions which
24 may include, but need not be limited to, outpatient care,
25 alcoholic and drug rehabilitation programs, community
26 adjustment programs, individual, group, family, and
27 chemotherapy, periodic checks with the legal authorities
28 and/or the Department of Human Services. The person or
29 facility rendering the outpatient care shall be required
30 to periodically report to the Court on the progress of
31 the defendant. Such conditional release shall be for a
32 period of five years, unless the defendant, the person or
33 facility rendering the treatment, therapy, program or
34 outpatient care, or the State's Attorney petitions the

1 Court for an extension of the conditional release period
2 for an additional three years. Upon receipt of such a
3 petition, the Court shall hold a hearing consistent with
4 the provisions of this paragraph (a) and paragraph (f) of
5 this Section, shall determine whether the defendant
6 should continue to be subject to the terms of conditional
7 release, and shall enter an order either extending the
8 defendant's period of conditional release for a single
9 additional three year period or discharging the
10 defendant. In no event shall the defendant's period of
11 conditional release exceed eight years. These provisions
12 for extension of conditional release shall only apply to
13 defendants conditionally released on or after July 1,
14 1979. However the extension provisions of Public Act
15 83-1449 apply only to defendants charged with a forcible
16 felony.

17 (E) "Facility director" means the chief officer of
18 a mental health or developmental disabilities facility or
19 his or her designee or the supervisor of a program of
20 treatment or habilitation or his or her designee.
21 "Designee" may include a physician, clinical
22 psychologist, social worker, or nurse.

23 (b) If the Court finds the defendant subject to
24 involuntary admission or in need of mental health services on
25 an inpatient basis, the admission, detention, care, treatment
26 or habilitation, treatment plans, review proceedings,
27 including review of treatment and treatment plans, and
28 discharge of the defendant after such order shall be under
29 the Mental Health and Developmental Disabilities Code, except
30 that the initial order for admission of a defendant acquitted
31 of a felony by reason of insanity shall be for an indefinite
32 period of time. Such period of commitment shall not exceed
33 the maximum length of time that the defendant would have been
34 required to serve, less credit for good behavior, before

1 becoming eligible for release had he been convicted of and
2 received the maximum sentence for the most serious crime for
3 which he has been acquitted by reason of insanity. The Court
4 shall determine the maximum period of commitment by an
5 appropriate order. During this period of time, the defendant
6 shall not be permitted to be in the community in any manner,
7 including but not limited to off-grounds privileges, with or
8 without escort by personnel of the Department of Human
9 Services, unsupervised on-grounds privileges, discharge or
10 conditional or temporary release, except by a plan as
11 provided in this Section. In no event shall a defendant's
12 continued unauthorized absence be a basis for discharge. Not
13 more than 30 days after admission and every 60 days
14 thereafter so long as the initial order remains in effect,
15 the facility director shall file a treatment plan report with
16 the court and forward a copy of the treatment plan report to
17 the clerk of the court, the State's Attorney, and the
18 defendant's attorney, if the defendant is represented by
19 counsel, or to a person authorized by the defendant under the
20 Mental Health and Developmental Disabilities Confidentiality
21 Act to be sent a copy of the report. The report shall
22 include an opinion as to whether the defendant is currently
23 subject to involuntary admission, in need of mental health
24 services on an inpatient basis, or in need of mental health
25 services on an outpatient basis. The report shall also
26 summarize the basis for those findings and provide a current
27 summary of the following items from the treatment plan: (1)
28 an assessment of the defendant's treatment needs, (2) a
29 description of the services recommended for treatment, (3)
30 the goals of each type of element of service, (4) an
31 anticipated timetable for the accomplishment of the goals,
32 and (5) a designation of the qualified professional
33 responsible for the implementation of the plan. The report
34 may also include unsupervised on-grounds privileges,

1 off-grounds privileges (with or without escort by personnel
2 of the Department of Human Services), home visits and
3 participation in work programs, but only where such
4 privileges have been approved by specific court order, which
5 order may include such conditions on the defendant as the
6 Court may deem appropriate and necessary to reasonably assure
7 the defendant's satisfactory progress in treatment and the
8 safety of the defendant and others.

9 (c) Every defendant acquitted of a felony by reason of
10 insanity and subsequently found to be subject to involuntary
11 admission or in need of mental health services shall be
12 represented by counsel in all proceedings under this Section
13 and under the Mental Health and Developmental Disabilities
14 Code.

15 (1) The Court shall appoint as counsel the public
16 defender or an attorney licensed by this State.

17 (2) Upon filing with the Court of a verified
18 statement of legal services rendered by the private
19 attorney appointed pursuant to paragraph (1) of this
20 subsection, the Court shall determine a reasonable fee
21 for such services. If the defendant is unable to pay the
22 fee, the Court shall enter an order upon the State to pay
23 the entire fee or such amount as the defendant is unable
24 to pay from funds appropriated by the General Assembly
25 for that purpose.

26 (d) When the facility director determines that:

27 (1) the defendant is no longer subject to
28 involuntary admission or in need of mental health
29 services on an inpatient basis; and

30 (2) the defendant may be conditionally released
31 because he or she is still in need of mental health
32 services or that the defendant may be discharged as not
33 in need of any mental health services; or

34 (3) the defendant no longer requires placement in a

1 secure setting;
2 the facility director shall give written notice to the Court,
3 State's Attorney and defense attorney. The facility director
4 shall also give written notice to the State's Attorney of the
5 county into which the defendant will be conditionally
6 released. Such notice shall set forth in detail the basis for
7 the recommendation of the facility director, and specify
8 clearly the recommendations, if any, of the facility
9 director, concerning conditional release. Within 30 days of
10 the notification by the facility director, the Court shall
11 set a hearing and make a finding as to whether the defendant
12 is:

- 13 (i) subject to involuntary admission; or
- 14 (ii) in need of mental health services in the form
15 of inpatient care; or
- 16 (iii) in need of mental health services but not
17 subject to involuntary admission or inpatient care; or
- 18 (iv) no longer in need of mental health services;
- 19 or
- 20 (v) no longer requires placement in a secure
21 setting.

22 Upon finding by the Court, the Court shall enter its
23 findings and such appropriate order as provided in subsection
24 (a) of this Section.

25 (e) A defendant admitted pursuant to this Section, or
26 any person on his behalf, may file a petition for treatment
27 plan review, transfer to a non-secure setting within the
28 Department of Human Services or discharge or conditional
29 release under the standards of this Section in the Court
30 which rendered the verdict. Upon receipt of a petition for
31 treatment plan review, transfer to a non-secure setting or
32 discharge or conditional release, the Court shall set a
33 hearing to be held within 120 days. Thereafter, no new
34 petition may be filed for 120 days without leave of the

1 Court.

2 (f) The Court shall direct that notice of the time and
3 place of the hearing be served upon the defendant, the
4 facility director, the State's Attorney, and the defendant's
5 attorney. If requested by either the State or the defense or
6 if the Court feels it is appropriate, an impartial
7 examination of the defendant by a psychiatrist or clinical
8 psychologist as defined in Section 1-103 of the Mental Health
9 and Developmental Disabilities Code who is not in the employ
10 of the Department of Human Services shall be ordered, and the
11 report considered at the time of the hearing.

12 (g) The findings of the Court shall be established by
13 clear and convincing evidence. The burden of proof and the
14 burden of going forth with the evidence rest with the
15 defendant or any person on the defendant's behalf when a
16 hearing is held to review the determination of the facility
17 director that the defendant should be transferred to a
18 non-secure setting, discharged, or conditionally released or
19 when a hearing is held to review a petition filed by or on
20 behalf of the defendant. The evidence shall be presented in
21 open Court with the right of confrontation and
22 cross-examination.

23 (h) If the Court finds that the defendant is no longer
24 in need of mental health services it shall order the facility
25 director to discharge the defendant. If the Court finds that
26 the defendant is in need of mental health services, and no
27 longer in need of inpatient care, it shall order the facility
28 director to release the defendant under such conditions as
29 the Court deems appropriate and as provided by this Section.
30 Such conditional release shall be imposed for a period of
31 five years and shall be subject to later modification by the
32 Court as provided by this Section. If the Court finds that
33 the defendant is subject to involuntary admission or in need
34 of mental health services on an inpatient basis, it shall

1 order the facility director not to discharge or release the
2 defendant in accordance with paragraph (b) of this Section.

3 (i) If within the period of the defendant's conditional
4 release, the Court determines, after hearing evidence, that
5 the defendant has not fulfilled the conditions of release,
6 the Court shall order a hearing to be held consistent with
7 the provisions of paragraph (f) and (g) of this Section. At
8 such hearing, if the Court finds that the defendant is
9 subject to involuntary admission or in need of mental health
10 services on an inpatient basis, it shall enter an order
11 remanding him or her to the Department of Human Services or
12 other facility. If the defendant is remanded to the
13 Department of Human Services, he or she shall be placed in a
14 secure setting unless the Court determines that there are
15 compelling reasons that such placement is not necessary. If
16 the Court finds that the defendant continues to be in need
17 of mental health services but not on an inpatient basis, it
18 may modify the conditions of the original release in order to
19 reasonably assure the defendant's satisfactory progress in
20 treatment and his or her safety and the safety of others. In
21 no event shall such conditional release be longer than eight
22 years. Nothing in this Section shall limit a Court's contempt
23 powers or any other powers of a Court.

24 (j) An order of admission under this Section does not
25 affect the remedy of habeas corpus.

26 (k) In the event of a conflict between this Section and
27 the Mental Health and Developmental Disabilities Code or the
28 Mental Health and Developmental Disabilities Confidentiality
29 Act, the provisions of this Section shall govern.

30 (l) This amendatory Act shall apply to all persons who
31 have been found not guilty by reason of insanity and who are
32 presently committed to the Department of Mental Health and
33 Developmental Disabilities (now the Department of Human
34 Services).

1 (m) The Clerk of the Court shall, after the entry of an
2 order of transfer to a non-secure setting of the Department
3 of Human Services or discharge or conditional release,
4 transmit a certified copy of the order to the Department of
5 Human Services, and the sheriff of the county from which the
6 defendant was admitted. In cases where the arrest of the
7 defendant or the commission of the offense took place in any
8 municipality with a population of more than 25,000 persons,
9 the Clerk of the Court shall also transmit a certified copy
10 of the order of discharge or conditional release to the
11 proper law enforcement agency for said municipality provided
12 the municipality has requested such notice in writing.

13 (n) If a defendant escapes from confinement in a
14 facility in which he or she has been placed under this
15 Section, or if a defendant leaves the facility or its grounds
16 without authorization, the facility director must immediately
17 notify (i) the State's Attorney and sheriff of the county in
18 which the facility is located, (ii) the State's Attorney and
19 sheriff of the county in which the finding or verdict of not
20 guilty by reason of insanity was entered, (iii) the crime
21 victim or victims (as defined in the Rights of Crime Victims
22 and Witnesses Act) of the offense of which the defendant was
23 found not guilty by reason of insanity, and (iv) any other
24 individual or entity for whom the facility director
25 determines notice is necessary for the protection of the
26 defendant or others.

27 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
28 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)

29 Section 99. Effective date. This Act takes effect upon
30 becoming law.